

Joseph P. Guglielmo (*pro hac vice*)
**SCOTT+SCOTT ATTORNEYS AT LAW
LLP**

The Helmsley Building
230 Park Ave., 24th Floor
New York, NY 10169
Telephone: (212) 223-6444

Attorneys for Plaintiff and the Putative Class

Joshua H. Lerner (Bar No. 220755)

joshua.lerner@wilmerhale.com

WILMER CUTLER PICKERING

HALE AND DORR LLP

One Front Street, Ste. 3500

San Francisco, CA 94111

Telephone: (628) 253-1000

Facsimile: (628) 235-1001

Karin Dryhurst (*pro hac vice*)

karin.dryhurst@wilmerhale.com

WILMER CUTLER PICKERING

HALE AND DORR LLP

2100 Pennsylvania Ave, N.W.

Washington, DC 20037

Telephone: (202) 663-6000

Facsimile: (202) 663-6363

*Attorney for Google LLC, Google Arizona
LLC, and Google Payment Corp.*

Additional Attorneys for Each Party Listed on Signature Page

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JUDY MAY, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

GOOGLE LLC, GOOGLE ARIZONA LLC,
GOOGLE PAYMENT CORP., and DOES 1
Through 10, Inclusive,

Defendants.

Case No. 5:24-cv-01314-BLF

~~[PROPOSED]~~ **STIPULATED
PROTECTIVE ORDER**
AS MODIFIED BY THE COURT

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 5 Accordingly, the Parties hereby stipulate to and petition the Court to enter the following
 6 Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket
 7 protections on all disclosures or responses to discovery and that the protection it affords from
 8 public disclosure and use extends only to the limited information or items that are entitled to
 9 confidential treatment under the applicable legal principles. The Parties further acknowledge, as
 10 set forth in Section 12.5, below, that this Stipulated Protective Order does not entitle them to file
 11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
 12 followed and the standards that will be applied when a Party seeks permission from the Court to
 13 file material under seal.

14 **2. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 18 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule
 19 of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
 21 well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that
 23 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the
 26 medium or manner in which it is generated, stored, or maintained (including, among other things,
 27
 28

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
5 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
6 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
7 or of a Party's competitor.

8 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
9 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
10 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
11 less restrictive means.

12 2.8 House Counsel: attorneys who are members in good standing of at least one state
13 bar, who are employees of a Party, and who have responsibility for managing this action. House
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
18 action but are retained to represent or advise a Party and have appeared in this action on behalf of
19 that Party or are affiliated with a law firm which has appeared on behalf of that Party.

20 2.11 Party: any party to this action.

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
22 Material in this action.

23 2.13 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, translating, preparing exhibits, or demonstrations, and
25 organizing, storing, or retrieving data in any form or medium, and professional jury or trial
26 consultants) and their employees and subcontractors, who (1) have been retained by a Party or its
27 counsel to provide litigation support services with respect to this action, (2) are (including any
28 employees and subcontractors) not a past or current employee of a Party or of a Party's

competitor, and (3) at the time of retention, are not anticipated to become an employee of a Party or of a Party's competitor.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material.

3. SCOPE

The protections conferred by this Stipulated Protective Order cover not only Protected Material (as defined above), but also: (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. The protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until the Designating Party agrees otherwise in writing or a Court order otherwise directs. Final disposition shall be deemed to be the later of: (1) dismissal of all claims and defenses in this action, with or without prejudice; or (2) entry of a final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or Non-Party that designates information or items for protection under this Order must take care
4 to limit any such designation to specific material that qualifies under the appropriate standards.
5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
6 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
7 encumber or retard the case development process or to impose unnecessary expenses and
8 burdens on other Parties) expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it designated
10 for protection do not qualify for protection at all or do not qualify for the level of protection
11 initially asserted, that Designating Party must promptly notify all other Parties that it is
12 withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
14 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
15 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
16 designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but
19 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
20 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
21 EYES ONLY" to each page of the document that contains protected material.

22 A Party or Non-Party that makes original documents or materials available for inspection
23 need not designate them for protection until after the inspecting Party has indicated which
24 material it would like copied and produced. During the inspection and before the designation, all
25 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
26 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents that it
27 wants copied and produced, the Producing Party must determine which documents qualify for
28 protection under this Order. Then, before producing the specified documents, the Producing

1 Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY”) to each page of the document that contains Protected Material.

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
4 Designating Party when practical identify on the record, before the close of the deposition,
5 hearing, or other proceeding, all protected testimony and specify the level of protection being
6 asserted. When it is impractical to identify separately each portion of testimony that is entitled to
7 protection and it appears that substantial portions of the testimony may qualify for protection, the
8 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
9 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
10 which protection is sought and to specify the level of protection being asserted. Only those
11 portions of the testimony that are appropriately designated for protection within the 21 days shall
12 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
13 Party may specify, at the deposition or up to 21 days afterwards if that period is properly
14 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 Parties shall give the other Parties reasonable notice (a minimum of two business days) if
17 they reasonably expect a deposition, hearing, or other proceeding to include Protected Material
18 so that the other Parties can ensure that only authorized individuals who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings.
20 The use of a document as an exhibit at a deposition shall not in any way affect its designation as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
22 Transcripts containing Protected Material shall have an obvious legend on the title page that the
23 transcript contains Protected Material, and the title page shall be followed by a list of all pages
24 (including line numbers as appropriate) that have been designated as Protected Material and the
25 level of protection being asserted by the Designating Party. The Designating Party shall inform
26 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
27 21-day period for designation shall be treated during that period as if it had been designated
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise

1 agreed. After the expiration of that period, the transcript shall be treated only as actually
2 designated.

3 (c) for information produced in some form other than documentary and for any other
4 tangible items, that the Producing Party affix in a prominent place on the exterior of the
5 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
6 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the Designating Party’s
9 right to secure protection under this Order for such material. Upon timely correction of a
10 designation, the Receiving Party must make reasonable efforts to assure that the material is
11 treated in accordance with the provisions of this Order.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality
14 at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is
15 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
16 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
17 confidentiality designation by electing not to mount a challenge promptly after the original
18 designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
20 process by providing written notice of each designation it is challenging and describing the basis
21 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
22 notice must recite that the challenge to confidentiality is being made in accordance with this
23 specific paragraph of the Protective Order. The Parties shall attempt to resolve each challenge in
24 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
25 forms of communication are not sufficient) within 14 days of the date of service of notice. In
26 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
27 designation was not proper and must give the Designating Party an opportunity to review the
28 designated material, to reconsider the circumstances, and, if no change in designation is offered,

to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court intervention, ~~the Challenging Party shall file and serve a motion to re-designate or de-designate under Civil Local Rule 7~~ ~~(and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has~~ ~~complied with the meet and confer requirements imposed in the preceding paragraph.~~ ~~they shall jointly submit the dispute in accordance with Judge van Keulen's Civil and Discovery Referral Matters Standing Order~~ ~~joint submission must be affirm that the Parties have~~

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other Parties) may expose the Challenging Party to sanctions. All Parties shall continue to afford the material in question the level of protection to which it is entitled under the Designating Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation, and such Protected Material shall not be used for any business purpose, in connection with any other legal proceeding, or directly or indirectly for any other purpose whatsoever. Such Protected Material may be disclosed only to

the categories of persons and under the conditions described in this Order.¹ When the litigation has been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by the Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order. Protected Material shall not be copied or otherwise reproduced by the Receiving Party, except for use in the litigation by qualified recipients or transmission to qualified recipients, without the written permission of the Producing Party or by further order of the Court.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) House Counsel of the Receiving Party to whom disclosure is reasonably necessary for this litigation

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

¹ In the event a Non-Party witness is authorized to receive Protected Material that is to be used during his/her deposition but is represented by an attorney not authorized under this Order to receive such Protected Material, the attorney must provide prior to commencement of the deposition an executed “Acknowledgment and Agreement to Be Bound” in the form attached hereto as Exhibit A. In the event such attorney declines to sign the “Acknowledgment and Agreement to Be Bound” prior to the examination, the Parties, by their attorneys, shall jointly seek a protective order from the Court prohibiting the attorney from disclosing Protected Material in order for the deposition to proceed.

(d) the Court and its personnel;

(e) stenographic reporters, videographers and/or their staff, and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, current employees, including 30(b)(6) designees of a Party in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

(g) during their depositions, witnesses who are not employees in the action to whom disclosure is necessary and who have signed the “Acknowledgement and Agreement to be Bound” (Exhibit A), unless the Designating Party objects to such disclosure or except as otherwise ordered by the Court. Before making such a disclosure, a Receiving Party must provide notice sufficient to allow the Designating Party to object; and

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or personally knows the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, the Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(c) the Court and its personnel;

(d) stenographic reporters, videographers and their respective staff, and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or personally knows the information or is designated to testify about the information as a Rule 30(b)(6) witness.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

(a)(1) Purposefully left blank.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraphs 7.3(b) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, which shall account for at least the past five years of the Expert’s work, (4) identifies the Expert’s current employer(s), and (5) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.²

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

² It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, ~~the Parties~~ ~~the Party~~ ~~must jointly submit the dispute in accordance with Judge van Keulen's Standing Order~~ ~~seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7~~ (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such ~~motion~~ ~~joint submission~~ must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such ~~motion must be accompanied by a competent declaration describing~~ ~~joint submission must describe~~ the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

(d) In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

(e) A party who has not previously objected to disclosure of Protected Material to an Expert or whose objection has been resolved with respect to previously produced Protected Material shall not be precluded from raising an objection to an Expert at a later time with respect to Protected Material that is produced after the time for objecting to such Expert has expired or if new information about that Expert is disclosed or discovered. Any such objection shall be handled in accordance with the provisions set forth above.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena issued by a court, arbitral, administrative, or legislative body, or with a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall include a
2 copy of the subpoena or court order;

3 (b) promptly notify in writing the person who caused the subpoena or order to issue
4 in the other litigation that some or all of the material covered by the subpoena or order is subject
5 to this Protective Order. Such notification shall include a copy of this Stipulated Protective
6 Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
8 Designating Party whose Protected Material may be affected.³

9 If the Designating Party timely⁴ seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
12 determination by the court from which the subpoena or order issued, unless the Party has
13 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
14 expense of seeking protection in that court of its confidential material – and nothing in these
15 provisions should be construed as authorizing or encouraging the Receiving Party in this action
16 to disobey a lawful directive from another court.

17 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
18 **THIS LITIGATION**

19 (a) The terms of this Order are applicable to information produced by a Non-Party in
20 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with
22

23 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this
24 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
25 its confidentiality interests in the court from which the subpoena or order issued.

26 ⁴ The Designating Party shall have at least 14 days from the service of the notification pursuant
27 to Section 8(a) to seek a protective order.
28

1 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
 2 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a
 4 Non-Party's confidential information in its possession, and the Party is subject to an agreement
 5 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 1. promptly notify in writing the Requesting Party and the Non-Party that some or
 7 all of the information requested is subject to a confidentiality agreement with a Non-Party;

8 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
 9 this litigation, the relevant discovery request(s), and a reasonably specific description of the
 10 information requested; and

11 3. make the information requested available for inspection by the Non-Party.

12 (c) If the Non-Party fails to object or seek a protective order from this Court within
 13 14 days of receiving the notice and accompanying information, the Receiving Party may produce
 14 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
 15 timely objects or seeks a protective order, the Receiving Party shall not produce any information
 16 in its possession or control that is subject to the confidentiality agreement with the Non-Party
 17 before a determination by the Court.⁵ Absent a Court order to the contrary, the Non-Party shall
 18 bear the burden and expense of seeking protection in this Court of its Protected Material.

19 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 21 Material to any person or in any circumstance not authorized under this Stipulated Protective
 22 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 23 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 24

25 ⁵ The purpose of this provision is to alert the interested Parties to the existence of confidentiality
 26 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
 27 interests in this Court.
 28

Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

If the Receiving Party or person authorized to access Protected Material (“Authorized Recipient”) discovers any loss of Protected Material or a breach of security, including any actual or suspected unauthorized access, relating to another Party’s Protected Material, the Receiving Party or Authorized Recipient shall: (1) promptly stop the unauthorized breach; (2) promptly (within 72 hours) provide written notice to the Designating Party of such breach, including information regarding the size and scope of the breach; and (3) investigate and make reasonable efforts to remediate the effects of the breach. In any event, the Receiving Party or Authorized Recipient shall promptly take all necessary and appropriate corrective action to terminate any unauthorized access.

11. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When the Producing Party gives notice to the Receiving Party that certain produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Party are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B), except as otherwise set forth in this Order. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the Party making the claim may notify any Party that received the information of the claim and the basis for it.

After being notified, a Party must promptly return or destroy the specified information and any copies it has and may not sequester, use, or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the Court for a determination of the claim.

Pursuant to Federal Rule of Evidence 502(d), the production or disclosure, pursuant to Fed. R. Civ. P. 34(a)(1), of any attorney-client privileged or work-product-protected documents and accompanying metadata (“Privileged Documents”) shall not result in the waiver of any claim

1 of privilege or work product protection associated with such Privileged Documents as to the
2 Receiving Party or any third parties in this or in any other state or federal proceeding, regardless
3 of the circumstances of such production or disclosure. Except as otherwise described below, this
4 Paragraph shall be interpreted to provide the maximum protection allowed by Federal Rule of
5 Evidence 502(d) with regard to Privileged Documents. Except as otherwise set forth in
6 Paragraph 11.1 below, the Producing Party is not required to satisfy the elements of Rule 502(b)
7 to properly assert the attorney-client privilege or work-product protection over disclosed
8 communications, information, and documents. Notwithstanding the foregoing, this Stipulation
9 does not preclude a Party from voluntarily waiving a claim or privilege or other protection.

10 11.1 Clawback Procedures for Document Used in Depositions, Court Filings, Hearings, and
11 Expert Reports.

12 (a) If the Receiving Party uses discovery materials at a deposition or in a court filing,
13 at a hearing, or in an expert report and the Producing Party has not served a clawback notice as to
14 those materials in advance of the deposition, court filing, hearing, or service of expert report, the
15 Producing Party shall serve a clawback notice within 21 calendar days of the deposition, court
16 filing, hearing, or service of expert report if the Producing Party claims that any discovery
17 materials used by the Receiving Party are attorney-client privileged or protected work product.
18 The Parties agree that any document used by any Party in a deposition, court filing, hearing, or
19 expert report, for which the Producing Party does not serve a clawback notice within 21 calendar
20 days of its use (“Used Document”), shall be analyzed under FRE 502(b) as opposed to FRE
21 502(d); however, such Used Document shall not result in a subject matter waiver in this action or
22 in any other state or federal proceeding. The Parties agree that the provisions in this paragraph in
23 no way affect the remainder of this Order and the applicability of Rule 502(d) to other privileged
24 or Protected Materials.

25 (b) The Producing Party shall be responsible for removing any privileged or
26 Protected Material from the public record and, at the Receiving Party’s option, for filing any
27 necessary amended public and/or redacted filings that contain the privileged or Protected
28 Material.

11.2 Miscellaneous.

(a) Nothing contained herein is intended to or shall serve to limit a Party's right to conduct a review of communications, information, or documents for relevance, responsiveness, and/or segregation of privileged and/or protected information before production.

(b) Nothing in this Stipulation is intended to create an obligation for a Party to conduct a privilege review of another Party's discovery material. It is the intent of the Parties that each side conduct a privilege review prior to the production of documents to the other. However, this Order does not discharge an attorney of their ethical duty to avoid reviewing or using obviously privileged or protected material received in discovery where it appears the material was produced inadvertently, or of the obligation to promptly notify the Producing Party of inadvertently disclosed privileged or protected material.

(c) In no event may a Producing Party rely on its own production or disclosure of privileged or work product materials as a basis to seek disqualification of a Receiving Party's counsel.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by agreement with other Parties or by applying to the Court if such agreement cannot be reached. Furthermore, without application to the Court, any Party that is a beneficiary of the protections of this Order may enter a written agreement releasing any other Party hereto from one or more requirements of this Order even if the conduct subject to the release would otherwise violate the terms herein.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 No Agreement Concerning Discoverability. The identification or agreed upon treatment of certain types of Disclosure and Discovery Material does not reflect agreement by

1 the Parties that the disclosure of such categories of Disclosure and Discovery Material is required
2 or appropriate in this action. The Parties reserve the right to argue that any particular category of
3 Disclosure and Discovery Material should not be produced.

4 12.4 Export Control. Disclosure of Protected Material shall be subject to all applicable
5 laws and regulations relating to the export of technical data contained in such Protected Material,
6 including the release of such technical data to foreign persons or nationals in the United States or
7 elsewhere. Each Party receiving Protected Material shall comply with all applicable export
8 control statutes and regulations. *See, e.g.*, 15 C.F.R. § 734 et. seq. No Protected Material may
9 leave the territorial boundaries of the United States of America or be made available to any
10 foreign national who is not (i) lawfully admitted for permanent residence in the United States or
11 (ii) identified as a protected individual under the Immigration and Naturalization Act (8 U.S.C. §
12 1324b(a)(3)). Without limitation, this prohibition extends to Protected Material (including
13 copies) in physical and electronic form. The viewing of Protected Material through electronic
14 means outside the territorial limits of the United States of America is similarly prohibited.
15 Notwithstanding this prohibition, Protected Material, to the extent otherwise permitted by law,
16 may be taken outside the territorial limits of the United States if it is reasonably necessary for a
17 deposition taken in a foreign country. The restrictions contained within this paragraph may be
18 amended with the consent of the producing Party to the extent that such agreed to procedures
19 conform with applicable export control laws and regulations.

20 12.5 Filing Protected Material. Without written permission from the Designating Party
21 or a Court order secured after appropriate notice to all interested persons, a Party may not file in
22 the public record in this action any Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
24 filed under seal pursuant to a Court order authorizing the sealing of the specific Protected
25 Material at issue. If the Receiving Party's request to file Protected Material under seal pursuant
26 to Civil Local Rule 79-5(f) is denied by the court, then the Receiving Party may file the
27 Protected Material in the public record only if so directed by the court.
28

1 At any point, a Party may seek to designate and protect previously produced Protected
2 Material as Highly Sensitive Documents/Information (HSD/HSI). The Parties will follow any
3 applicable court orders regarding the procedures for HSD/HSI

4 12.6 Use of Protected Material at Hearing or Trial. A Party shall provide a minimum of
5 two business days' notice to the Producing Party in the event that a Party intends to use any
6 Protected Material during any hearing or trial. Subject to any challenges under Section 6, the
7 Parties will not oppose any reasonable request by the Producing Party that the courtroom be
8 sealed, if allowed by the Court, during the presentation of any testimony, evidence, or argument
9 relating to or involving the use of any Protected Material.

10 12.7 No Limitation on Legal Representation. Nothing in this Order shall preclude or
11 impede Outside Counsel of Record's ability to communicate with or advise their client in
12 connection with this litigation based on such counsel's review and evaluation of Protected
13 Material, provided however that such communications or advice shall not disclose or reveal the
14 substance or content of any Protected Material other than as permitted under this Order.

15 12.8 Violations. If any Party violates the limitations on the use of Protected Material as
16 described above, the Party violating this Order shall be subject to sanctions, or any other
17 remedies as appropriate, as ordered by the Court. In the event motion practice is required to
18 enforce the terms of this Order, the prevailing party on such a motion shall be awarded costs,
19 expenses, and fees, including attorney or other professional fees, incurred in connection with the
20 discovery of the violation and the preparation, filing, and arguing of the motion or any other
21 proceedings resulting from the violation.

22 12.9 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms
23 of this Stipulated Protective Order as of the date counsel for such party executes this Stipulated
24 Protective Order, even if prior to entry of this Order by the Court.

25 12.10 Data Security. Any person in possession of Protected Material will maintain
26 appropriate administrative, technical, and organizational safeguards ("Safeguards") that protect
27 the security and privacy of Protected Material, including restrictions against the disclosure or use
28 of Protected Material in any large language models or any artificial intelligence services. The

1 Safeguards will meet or exceed relevant industry standards and limit the collection, storage,
2 disclosure, use of, or access to Protected Material solely to personnel and purposes authorized by
3 this Order. As part of these Safeguards, each person will use a secure transfer method for all
4 transfers or communication of Protected Material, and take reasonable measures to password
5 protect and encrypt Protected Material. Each person will ensure that anyone acting on that
6 person's behalf is subject to the Safeguards or otherwise provides equivalent or greater
7 protections for the security and privacy of Protected Material. If Protected Material is to be used
8 during a remote deposition, the Designating Party shall be permitted to specify the technology
9 and instance to be used to conduct the remote deposition with respect to that Protected Material
10 (e.g., for audio/video-conferencing and exhibits).

11 **13. FINAL DISPOSITION**

12 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
13 Receiving Party must return all Protected Material to the Producing Party or destroy such
14 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
15 compilations, summaries, and any other format reproducing or capturing any of the Protected
16 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
17 submit a written certification to the Producing Party (and, if not the same person or entity, to the
18 Designating Party) by the 60-day deadline that (1) identifies (by bates range or category, where
19 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
20 Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other
21 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
22 Counsel are entitled to retain an archival copy of all pleadings, motions, and trial briefs
23 (including all supporting and opposing papers and exhibits thereto), written discovery requests
24 and responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial
25 transcripts, and exhibits offered or introduced into evidence at any hearing or trial, and their
26 attorney work product which refers or is related to any "CONFIDENTIAL" and "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information for archival purposes only. Any
28

such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. INTERPRETATION, ENFORCEMENT, AND CONTINUING JURISDICTION

The United States District Court for the Northern District of California is responsible for the interpretation and enforcement of this Order. After final disposition of this litigation, the provisions of this Order shall continue to be binding except with respect to that Disclosure or Discovery Material that become a matter of public record. This Court retains and shall have continuing jurisdiction over the Parties and recipients of the Protected Material for enforcement of the provisions of this Order following final disposition of this litigation. All disputes concerning Protected Material produced under the protection of this Order shall be resolved by the United States District Court for the Northern District of California.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: October 23, 2024

Respectfully submitted,

/s/ Joseph P. Guglielmo

Joseph P. Guglielmo (*pro hac vice*)

jguglielmo@scott-scott.com

Amanda M. Rolon (*pro hac vice*)

arolon@scott-scott.com

**SCOTT+SCOTT ATTORNEYS AT LAW
LLP**

The Helmsley Building

230 Park Ave., 24th Floor

New York, NY 10169

Telephone: (212) 223-6444

Hal Cunningham (Bar No. 243048)

hcunningham@scott-scott.com

600 W. Broadway, Suite 3300

San Diego, CA 92101

Telephone: (619) 233-4565

Nyran Rose Rasche (*pro hac vice*)

nrasche@caffertyclobes.com

Nickolas J. Hagman (*pro hac vice*
forthcoming)

nhagman@caffertyclobes.com

**CAFFERTY CLOBES MERIWETHER &
SPRENGEL LLP**

135 South LaSalle Street, Suite 3210
Chicago, IL 60603
Telephone: (312) 782-4880

Anthony F. Fata (*pro hac vice*)
afata@kmlp.com
Sarah E. Flohr (*pro hac vice*)
sflohr@kmlp.com

KIRBY MCINERNEY LLP
211 West Wacker Drive, Suite 550
Chicago, IL 60606
Telephone: (312) 767-5180

Attorneys for Plaintiff and the Putative Class

Dated: October 23, 2024

Respectfully submitted,

/s/ Joshua H. Lerner
Joshua H. Lerner (CA Bar No. 220755)
joshua.lerner@wilmerhale.com
**WILMER CUTLER PICKERING
HALE AND DORR LLP**
One Front Street, Ste. 3500
San Francisco, CA 94111
(628) 253-1000 (phone)
(628) 235-1001 (fax)

Karin Dryhurst (*pro hac vice*)
karin.dryhurst@wilmerhale.com
Robin Burrell (*pro hac vice*)
robin.burrell@wilmerhale.com
Donna Farag (*pro hac vice*)
donna.farag@wilmerhale.com
**WILMER CUTLER PICKERING
HALE AND DORR LLP**
2100 Pennsylvania Ave, N.W.
Washington, DC 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363

Mark L. Hanin (*pro hac vice*)
mark.hanin@wilmerhale.com
**WILMER CUTLER PICKERING
HALE AND DORR LLP**
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800

Facsimile: (202) 230-8888

Amanda Baird (*pro hac vice*)
amanda.baird@wilmerhale.com

**WILMER CUTLER PICKERING
HALE AND DORR LLP**

60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

*Attorneys for Defendants Google LLC,
Google Arizona LLC, and Google
Payment Corp.*

ATTESTATION (L.R. 5-1(i)(3))

Pursuant to Local Rule 5-1(i)(3), I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: October 23, 2024

/s/ Joseph P. Guglielmo
Joseph P. Guglielmo (*pro hac vice*)

~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: October 29, 2024



Susan van Keulen
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under penalty of perjury that I have
 read in its entirety and understand the Stipulated Protective Order that was issued by the United
 States District Court for the Northern District of California on [date] in the case of *May v.*
Google LLC, No. 5:24-cv-01314 (N.D. Cal. filed Mar. 5, 2024). I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that is subject to
 this Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action. I
 hereby appoint _____ [print or type full name] of _____
 _____ [print or type full address and telephone number] as my California agent
 for service of process in connection with this action or any proceedings related to enforcement of
 this Stipulated Protective Order.

Date: _____

City and state where sworn and signed: _____

 Signature

 Printed Name